

ESTTA Tracking number: **ESTTA123808**

Filing date: **02/07/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	Rocky Brands, Inc.		
Entity	Corporation	Citizenship	Ohio
Address	39 EAST CANAL STREET NELSONVILLE, OH 45764 UNITED STATES		

Attorney information	Robert J. Morgan Porter Wright Morris & Arthur LLP 41 South High Street Huntington Center Columbus, OH 43215 UNITED STATES ipdocket@porterwright.com Phone:6142272000
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### Applicant Information

Application No	78830058	Publication date	01/09/2007
Opposition Filing Date	02/07/2007	Opposition Period Ends	02/08/2007
Applicant	Binder Salem Co. Inc. 217 E 157th Street Gardena, CA 90248 UNITED STATES		

### Goods/Services Affected by Opposition

Class 025. All goods and sevicees in the class are opposed, namely: clothing, namely shirts, knit shirts, polo shirts, tee shirts, sweat shirts, hooded sweat shirts, and zippered sweat shirts
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Attachments	Microsoft Word - 196p401__DOC.pdf ( 1 page )(8477 bytes )
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Signature	/Robert J. Morgan/
Name	Robert J. Morgan
Date	02/07/2007

## NOTICE OF OPPOSITION

Rocky Brands, Inc. ("Rocky" or "Opposer"), a company organized under the laws of the state of Ohio, believes it will be damaged by the registration of the mark shown in U.S. application Serial No. 78/830058, applied for on March 6, 2006, and published for opposition on January 9, 2007, and hereby opposes said application.

As grounds for the notice of opposition, it is alleged that:

1. Applicant has applied for the mark **ROCKER STALKER** to identify clothing, namely shirts, knit shirts, polo shirts, tee shirts, sweat shirts, hooded sweat shirts, and zippered sweat shirts, in International Class 25, as evidenced by the publication of said mark in the January 9, 2007 issue of the *Official Gazette*.
2. Opposer is the owner of the following registrations for marks used in association with goods in International Class 25: **STALKERS**, the subject of U.S. Registration No. 1975747, registered May 28, 1996; **SNOW STALKER**, U.S. Reg. No. 1955171, registered February 6, 1996; and **CORNSTALKERS**, U.S. Reg. No. 1897612, registered June 6, 1995.
3. Opposer's **STALKERS** mark and family of "**STALKER**" marks uniquely serve to identify the source and origin of goods that bear the mark and serve to distinguish Opposer's **STALKERS** products from those promoted, manufactured, and sold by others.
4. Priority is not an issue in this case. Applicant's application is based on an intent-to-use the subject mark. Applicant's application was filed nearly 10 years after Opposer's registration of **STALKERS**.
5. Upon seeing the **ROCKER STALKER** mark, the public is likely to think that Applicant's goods are sponsored by or affiliated with Opposer, or that Opposer has licensed Applicant to use the mark.
6. Applicant's **ROCKER STALKER** mark is composed of a term that is phonetically and visually similar to Opposer's house brand, **ROCKY**, and a term that is essentially identical to Opposer's registered **STALKERS** mark.
7. The parties' goods are substantially related. As a result, there is, or could be, overlap in the parties' marketing and trade channels since the parties' goods are identical with respect to some of the goods, and substantially related with respect to the others.
8. Use of, and registration by, Applicant of **ROCKER STALKER** for all of the goods identified in the application will, or is likely to, cause confusion or mistake, or will deceive consumers erroneously into the belief that Applicant's goods are authorized or sponsored by Opposer, or otherwise connected with the business of Opposer. Applicant's registration of **ROCKER STALKER** would allow Applicant to reap the financial reputation-related reward associated with Opposer's goods and retail activities and misappropriate goodwill to Applicant that Opposer has established. Opposer would be injured in the provision, sale, and distribution of its goods, and in the conduct of its business.
9. Accordingly, in view of the fact that Opposer's **STALKERS** mark and the applied-for **ROCKER STALKER** mark are confusingly similar, the substantial overlap in the parties' goods, and other relevant considerations, Opposer will be damaged by the registration of the mark shown in U.S. application Serial No. 78/830058 because:
  - a. The applied-for **ROCKER STALKER** mark is likely to cause confusion, or to cause mistake or to deceive when used in connection with the goods and business of Applicant; and
  - b. The applied-for **ROCKER STALKER** mark is confusingly similar to Opposer's **STALKERS** mark and family of **STALKER** marks. As a result, registration of the applied-for mark may disparage and falsely suggest a connection with Opposer and injure Opposer's reputation; and
  - c. Registration of the mark **ROCKER STALKER** by Applicant would tend to restrict and interfere with Opposer in the conduct of Opposer's business; and
  - d. Registration of **ROCKER STALKER** causes dilution of Opposer's rights in Opposer's marks and of the distinctive qualities of such mark, causing Opposer to suffer loss of goodwill in the mark.

WHEREFORE, Opposer prays that this Opposition be sustained, that application Serial No. 78/830058 hereby opposed be refused and no registration be issued to Applicant thereon, and for such other and further relief as may be deemed appropriate.